



**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
RESTON RELAC LLC  
FOR  
RESTON LAKE ANNE AIR CONDITIONING  
VPDES Permit No. VA0091995**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Reston RELAC LLC, regarding the Reston Lake Anne Air Conditioning Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "316(b)" means § 316(b) of the Clean Water Act (33 United States Code § 1315(b)).
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" or "Site" means the Reston Lake Anne Air Conditioning facility located at 11485 Washington Plaza West, Reston, Virginia 20190, from which discharges of non-contact cooling water occur.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES Permit No. VA0091995, which was issued under the State Water Control Law and the Regulation to Reston RELAC LLC on May 8, 2017, and which expires on May 7, 2022.
14. "Regulation" means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9 VAC 25-31 et seq.
15. "Reston RELAC LLC" means Reston RELAC LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Reston RELAC LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.

17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "UT" means unnamed tributary.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Reston RELAC LLC owns and operates the Facility located at 11485 Washington Plaza West, Reston, Virginia, which discharges non-contact cooling water associated with a central air conditioning system.
2. The Permit allows Reston RELAC LLC to discharge non-contact cooling water from the Facility to Lake Anne, in strict compliance with the terms and conditions of the Permit.
3. Lake Anne is located in the Potomac River Basin, and has been neither monitored nor assessed by DEQ. Lake Anne drains to a UT to Colvin Run, which has not been monitored by DEQ. This UT has been assessed as insufficient, with an observed effect for aquatic life use based on citizen benthic macroinvertebrate monitoring. Colvin Run directly downstream of the UT has been neither monitored nor assessed. Lake Fairfax, downstream of Colvin Run, was not monitored by DEQ during the 2018 water quality assessment, but has been assessed as insufficient with an observed effect for aquatic life use based on citizen benthic macroinvertebrate monitoring. Difficult Run is located approximately three miles downstream from this Facility. Difficult Run is listed in DEQ's 305(b) report as impaired for fish consumption use, due to PCBs in fish tissues; four miles from the Facility, Difficult Run is listed as impaired for recreational use, due to bacteria, for aquatic life use, based on benthic macroinvertebrate bioassessment, and for fish consumption use, due to PCBs in fish tissues and heptachlor epoxide.
4. Part I.A.1 of the Permit requires Reston RELAC LLC to comply with effluent discharge limitations for the specified parameters. The stated daily maximum limit for the "temperature" parameter is 32°C.
5. Part I.C.1.b of the Permit requires Reston RELAC LLC to report, twice per year, the Facility's progress on compliance with final zinc limits specified in Part I.A of the

Permit. The deadlines for these submissions to DEQ are stated as January 10 and July 10 of every year, from January 2018 through January 2021.

6. Part I.D.5 of the Permit requires Reston RELAC LLC to prepare and submit, by February 10 of each year, a statement certifying whether or not, during the preceding year, any substantial changes occurred at the Facility's cooling water intake structures that would impact withdrawals or operation.
7. Part I.D.6 of the Permit requires Reston RELAC LLC to report yearly, by February 10, on the efficiency and effectiveness of the Facility's 316(b) control measures to protect threatened and endangered species, critical habitat, and fragile species or shellfish for the previous year.
8. During regular DEQ file review, DEQ staff documented the following compliance deficiencies with respect to the monitoring and reporting requirements of the Permit:
  - a. The 3<sup>rd</sup> Quarter 2018 DMR, received by DEQ on October 10, 2018, reported a maximum temperature of 34.3°C.
  - b. The biannual progress report to achieve compliance with final zinc limits was due by January 10, 2019, and was not received until April 10, 2019.
  - c. The statement certifying substantial or no substantial changes in operations of any unit at the facility that impacts cooling water withdrawals or operation of cooling water intake was due by February 10, 2019, and was not received until April 10, 2019.
  - d. The Report on the efficiency and effectiveness of the facility's 316(b) control measures to protect threatened and endangered species, critical habitats, and fragile species or shellfish was due by February 10, 2019, and was not received by DEQ.
9. NRO issued Warning Letters and a Notice of Violation for the violations noted above as follows:
  - a. WL No. W2019-03-N-1006, issued March 22, 2019
  - b. WL No. W2019-04-N-1001, issued April 18, 2019
  - c. NOV No. W2019-05-N-0011, issued May 23, 2019
  - d. NOV No. W2019-06-N-0002, issued June 14, 2019
10. Reston RELAC LLC responded to the Warning Letters and Notice of Violation by submitting the responses, plans, and reports necessary to address the violations from paragraphs C(8a), C(8b), and C(8c) on April 10, 2019.
11. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.

12. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
14. The Department has issued coverage under no permits or certificates to Reston RELAC LLC other than under VPDES Permit No. VA0091995, and its predecessor, VPDES Permit No. VAG250038.
15. Lake Anne is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
16. Based on the results of the documentation submitted on October 10, 2018, April 10, 2019, the Board concludes that Reston RELAC LLC has violated the Permit conditions Part I.A.1, Part I.C.1.b, Part I.D.5, and Part I.D.6, as described in paragraphs C(1) – C(15), above.
17. On June 13, 2019, Department staff met with representatives of Reston RELAC LLC to discuss the violations.
18. Reston RELAC LLC has submitted documentation that the violations as described in paragraph C(8a-c), above, have been corrected.
19. In order for Reston RELAC LLC to complete its return to compliance, DEQ staff and Reston RELAC LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Reston RELAC LLC, and Reston RELAC LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$1,400** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Reston RELAC LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Reston RELAC LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Reston RELAC LLC for good cause shown by Reston RELAC LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Reston RELAC LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Reston RELAC LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Reston RELAC LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Reston RELAC LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Reston RELAC LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Reston RELAC LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Reston RELAC LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
- a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Reston RELAC LLC. Nevertheless, Reston RELAC LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. The Director or his designee terminates the Order after Reston RELAC LLC has completed all of the requirements of the Order;
  - b. Reston RELAC LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Reston RELAC LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Reston RELAC LLC from its obligation to comply with any statute, regulation,

permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Reston RELAC LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Reston RELAC LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Reston RELAC LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Reston RELAC LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Reston RELAC LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24<sup>th</sup> day of February, 2020, 2019.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Reston RELAC LLC voluntarily agrees to the issuance of this Order.

Date: 12/12/2019 By: Mark Waddell President  
(Person) (Title)  
Reston RELAC LLC

Commonwealth of Virginia  
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 12<sup>th</sup> day of  
December, 2019, by Mark Waddell who is  
President of Reston RELAC LLC, on behalf of the company.

Maya Lynn Gentry Maya Gentry  
Notary Public  
7836041  
Registration No.

My commission expires: 05/31/2023

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. **Reston RELAC LLC shall:**

- a. Submit to DEQ NRO its completed report on the efficiency and effectiveness of the Facility's 316(b) control measures for the calendar year 2018, as required by Part I.D.6 of the Permit, **within 60 days** of the execution of this Order.
- b. Submit to DEQ NRO its completed report on the efficiency and effectiveness of the Facility's 316(b) control measures for the calendar year 2019, as required by Part I.D.6 of the Permit, by the Permit required due date of **February 10, 2020**.

2. **DEQ Contact**

Unless otherwise specified in this Order, Reston RELAC LLC shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality  
Northern Regional Office  
Attn: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193**

